

Department of State

§ 42.22

the applicant's birth, may be charged to the foreign state of either parent as provided in INA 202(b)(4). The parents of such an alien are not considered as having acquired a residence within the meaning of INA 202(b)(4), if, at the time of the alien's birth within the foreign state, the parents were visiting temporarily or were stationed there in connection with the business or profession and under orders or instructions of an employer, principal, or superior authority foreign to such foreign state.

[52 FR 42613, Nov. 5, 1987, as amended at 56 FR 49681, Oct. 1, 1991]

Subpart C—Immigrants Not Subject to Numerical Limitations of INA 201 and 202

SOURCE: 56 FR 49676, Oct. 1, 1991, unless otherwise noted.

§ 42.21 Immediate relatives.

(a) *Entitlement to status.* An alien who is a spouse or child of a United States citizen, or a parent of a U.S. citizen at least 21 years of age, shall be classified as an immediate relative under INA 201(b) if the consular officer has received from DHS an approved Petition to Classify Status of Alien Relative for Issuance of an Immigrant Visa, filed on the alien's behalf by the U.S. citizen and approved in accordance with INA 204, and the officer is satisfied that the alien has the relationship claimed in the petition. An immediate relative shall be documented as such unless the U.S. citizen refuses to file the required petition, or unless the immediate relative is also a special immigrant under INA 101(a)(27) (A) or (B) and not subject to any numerical limitation.

(b) *Spouse of a deceased U.S. citizen.* The spouse of a deceased U.S. citizen, and each child of the spouse, will be entitled to immediate relative status after the date of the citizen's death provided the spouse or child meets the criteria of INA 201(b)(2)(A)(i) or of section 423(a)(1) of Public Law 107-56 (USA Patriot Act) and the Consular Officer has received an approved petition from the DHS which accords such status, or official notification of such approval, and the Consular Officer is satisfied that the alien meets those criteria.

(c) *Child of a U.S. citizen victim of terrorism.* The child of a U.S. citizen slain in the terrorist actions of September 11, 2001, shall retain the status of an immediate relative child (regardless of changes in age or marital status) if the child files a petition for such status within two years of the citizen's death pursuant to section 423(a)(2) of Public Law 107-56, and the consular officer has received an approved petition according such status or official notification of such approval.

[56 FR 49676, Oct. 1, 1991, as amended at 64 FR 55419, Oct. 13, 1999; 67 FR 1415, Jan. 11, 2002]

§ 42.22 Returning resident aliens.

(a) *Requirements for returning resident status.* An alien shall be classifiable as a special immigrant under INA 101(a)(27)(A) if the consular officer is satisfied from the evidence presented that:

(1) The alien had the status of an alien lawfully admitted for permanent residence at the time of departure from the United States;

(2) The alien departed from the United States with the intention of returning and has not abandoned this intention; and

(3) The alien is returning to the United States from a temporary visit abroad and, if the stay abroad was protracted, this was caused by reasons beyond the alien's control and for which the alien was not responsible.

(b) *Documentation needed.* Unless the consular officer has reason to question the legality of the alien's previous admission for permanent residence or the alien's eligibility to receive an immigrant visa, only those records and documents required under INA 222(b) which relate to the period of residence in the United States and the period of the temporary visit abroad shall be required. If any required record or document is unobtainable, the provisions of § 42.65(d) shall apply.

(c) *Returning resident alien originally admitted under the Act of December 28, 1945.* An alien admitted into the United States under Section 1 of the Act of December 28, 1945 ("GI Brides Act") shall not be refused an immigrant visa